

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/553,652 Confirmation No. : 3727  
Applicants : Eugene SHERRY et al.  
Received : October 14, 2005  
Title : **A Support Arrangement for Use in Supporting a Bone During a Surgical Operation**  
Group Art Unit : Not Yet Assigned  
Examiner : Not Yet Assigned  
Customer No. : 28289

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**PETITION UNDER 37 CFR § 1.181(a) TO WITHDRAW HOLDING OF ABANDONMENT**

Sir:

Pursuant to 37 CFR § 1.181(a), Applicants hereby Petition to Withdraw the Holding of Abandonment in the current application. Applicants respectfully submit that a reply to the Notification of Missing Requirements Under 35 U.S.C. 371 mailed on June 28, 2006 was timely submitted to the United States Patent Office using the Express Mail service of the United States Postal Service on August 23, 2006 and was received by the Patent Office on the same day, as evidenced by postcard receipt. Accordingly, the Notice of Abandonment, mailed May 20, 2009, should be withdrawn and Applicants' aforementioned Reply should be accorded a filing date of August 23, 2006.

I hereby certify that this correspondence is being electronically submitted to the United States Patent and Trademark Office on June 23, 2009.

06/23/2009  
Date

Signature

Lisa A. Miller  
Typed Name of Person Signing Certificate

Application No. 10/553,652  
Paper Dated: June 23, 2009  
Attorney Docket No. 5000-053079

For purposes of this discussion, true copies of the following documents are attached hereto:

Appendix A: the Notification of Missing Requirements Under 35 U.S.C. 371 mailed on June 28, 2006 (“Notification of Missing Requirements”);

Appendix B: Applicants’ “Letter Re Completion of Filing Requirements For International Application Entering U.S. National Stage in U.S. Elected Office (EO/US) Under 35 USC 371” (“Applicants’ Reply”) dated August 23, 2006;

Appendix C: the United States Postal Service Express Mail receipt accompanying Applicants’ Reply indicating that Applicants’ Reply was deposited with the Express Mail service on August 23, 2006;

Appendix D: the return postcard receipt stamped by the United States Patent Office indicating that Applicants’ Reply was received on August 23, 2006 (“Postcard”); and

Appendix E: the Notice of Abandonment mailed May 20, 2009 (“Notice of Abandonment”).

Also included herewith is a clean copy of Applicants’ Reply for use by the Patent Office, as needed, pending the successful grant of this Petition.

## SUMMARY

On June 28, 2006, a Notification of Missing Requirements was mailed to Applicants’ undersigned representatives. (Appendix A) This Notification indicated that the following item must be furnished within two months from the date of the Notice to avoid abandonment:

Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date.

In response to the Notification of Missing Requirements, Applicants' filed Applicants' Reply, which included a Combined Declaration and Power of Attorney and the required copy of the Notification of Missing Requirements. (Appendix B) Applicants' Reply was deposited with the Express Mail service of the United States Postal Service on August 23, 2006, as was certified on the first page of Applicants' Reply and confirmed by the Express Mail receipt. (Appendix C) This date was within the two month window allotted by the Notification of Missing Requirements. Applicants' submit that this reply was sufficient to satisfy the request set forth in the Notification of Missing Requirements.

Applicants' Reply was further accompanied by a self-addressed stamped postcard receipt. (Appendix D) This Postcard was stamped "Rec'd" by the "PCT/PTO" on August 23, 2006 and returned to Applicants' representative on August 30, 2006. This Postcard provides *prima facie* evidence that Applicants' Reply was received by the United States Patent and Trademark Office. M.P.E.P. § 503.

Despite the above, Applicants' received a Notice of Abandonment mailed May 20, 2009 indicating that the subject application had gone abandoned due to Applicants' failure to respond to the June 28, 2006 Notification of Missing Requirements. (Appendix E) Upon learning of the abandonment of the application through receipt of the Notice of Abandonment, the instant Petition was diligently prepared and filed without any intentional or undue delay.

#### REMARKS

Applicants' submit that the Notice of Abandonment was erroneously issued and should be withdrawn since Applicants timely filed an appropriate reply in response to the June 28, 2006 Notification of Missing Requirements. Through no fault of Applicants, this response was not properly processed after receipt by the Patent Office. Applicants respectfully request that the Notification of Abandonment be withdrawn and that Applicants' Reply be given the appropriate filing date, namely the date corresponding to the Express Mail date of August 23, 2006. *See* 37 C.F.R. § 1.10(a)(1); *see also* M.P.E.P. § 711.03(c).

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Should further information be required in connection with this Petition, please contact Applicants' undersigned representative at the phone number or address provided below. The Commissioner is hereby authorized to charge any fees which may be required to Deposit Account No. 23-0650.

Respectfully submitted,

THE WEBB LAW FIRM

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